



**Joann Waiters**  
Senior Counsel, State Relations

July 19, 2011

Stephen M. Cordi  
Chairman, Multistate Tax Commission  
Executive Committee  
1101 Fourth Street, SW  
Suite W750  
Washington, DC 20024

Sent Via E-mail: Stephen.Cordi@dc.gov

Re: Multistate Tax Commission's Proposed Statute regarding partnership or pass-through entity income that is ultimately realized by an entity that is not subject to income tax

Dear Chairman Cordi:

I am writing on behalf of the American Council of Life Insurers (ACLI), a national trade association whose more than 300 legal reserve life insurer and fraternal benefit society member companies account for over 90 percent of the total assets and premiums of the U.S. life insurance and annuity industry. ACLI member companies are major participants in the life, disability income, annuities, and long-term care insurance market in the District of Columbia. In your role as the chairman of the Multistate Tax Commission (MTC) Executive Committee, we seek your assistance in the MTC's Proposed Model Statute regarding partnership or pass-through entity income that is ultimately realized by an entity that is not subject to income tax (i.e., Non-Corporate Income Taxpayer Project).

It is our understanding from the MTC that the proposal is designed to "address tax inequities presented by a business structure that allows entities not subject to state income tax to conduct another business through a partnership or disregarded entity." The Commission further states that "[O]rdinarily, the income of a pass through entity would be taxed upon its receipt by an entity that is subject to state income tax. But if the recipient of the income is not subject to the state income tax, no tax is imposed either on the pass through entity or the nontaxable entity." Consequently the proposal creates, in essence, a test that asserts that when an insurance company owns, directly or indirectly, 50% or more of a partnership or pass through entity, it is conducting a non-insurance business and income from that entity will be taxed as non-insurance related income.

We strongly contend that investments in such entities, which are routine for insurers, do not constitute a non-insurance business that should subject us to income tax. The MTC proposal, if adopted, will negatively impact insurers and how they invest and operate. Those practices, including investing through LLCs and partnerships, are well established and have been developed over many years of state regulatory guidance and scrutiny. Such investments do not constitute insurers conducting a non-insurance business that should subject them to non-insurance related taxation. Therefore, any statutory amendments and or refinements relating to those standard insurer investment practices are clearly more a matter of public policy than tax policy and, as such, should be addressed by state insurance regulators rather than in the tax arena. Further, the proposal would increase the tax burden on insurers,

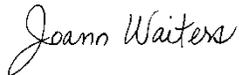
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which in turn will likely be passed on to the consumer in the form of higher insurance premiums. Recently, the National Association of Insurance Commissioners (NAIC) contacted the MTC asking for additional time on the proposal to discuss these important issues with the MTC.

As set forth in the attached May 26, 2011 industry comments, the ACLI, the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCIA) identified six important reasons why the proposed model statute should be returned to the MTC Uniformity Committee for further discussion. We urge your support of our position and respectfully request that for these reasons you vote to return the proposed model to the MTC Uniformity Committee for additional research and refinement.

We thank you in advance for your consideration of our comments. We would be more than happy to schedule an in-person meeting or conference call with you prior to the July 28 MTC Committee meeting to further discuss our concerns and answer any questions you may have. Please contact me if you have questions regarding our comments and requests.

Sincerely,

A handwritten signature in cursive script that reads "Joann Waiters".

Joann Waiters

Attachment: May 26, 2011 Written Comments to the Multistate Tax Commission

**AMERICAN COUNCIL OF LIFE INSURERS  
AMERICAN INSURANCE ASSOCIATION  
PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA**

May 26, 2011

Sheldon Laskin  
Multistate Tax Commission  
444 N. Capitol Street, N.W., Suite 425  
Washington, DC 20001-1538

Re: Comments on MTC's Proposed Statute Regarding Partnership or Pass-Through Entity Income That Is Ultimately Realized By An Entity That Is Not Subject To Income Tax

Dear Sheldon,

On behalf of the American Council of Life Insurers, the American Insurance Association and the Property Casualty Insurers Association of America, I want to thank the MTC for providing us the opportunity to offer comments at the May 16th public hearing on the MTC's proposed draft statute regarding taxation of income generated by partnership or pass-through entities owned by entities not subject to state income tax. We feel the exchange of ideas at the public hearing was very helpful.

As a follow-up to both our written and oral comments submitted at the public hearing, we would like to restate that we feel very strongly that more study is necessary before the MTC can make a well-informed decision on whether to proceed with adoption of the proposed model statute. As we stated at the hearing, we feel that the Uniformity Subcommittee has not sufficiently investigated the full effects of its proposal, to wit:

1. The Subcommittee has not fully investigated the effects of the adoption of the proposed draft statute, including in particular the retaliatory tax impact and implications for the current insurance tax system.
2. The Subcommittee has not considered the administrative problems created by the proposed draft statute.
3. The Subcommittee has not considered the effects of the proposed draft statute on insurance companies and their policyholders.
4. The proposed draft statute is based on the faulty premise that insurance companies pay less tax than non-insurance businesses.
5. The draft proposed statute discriminates, creating new inequities.
6. Because insurance companies are already heavily regulated requiring that insurer investment decisions be driven by non-tax business considerations, any concern among Subcommittee members regarding "abusive" transactions is ill-founded.

As more fully detailed in our prior submissions, the undersigned trades feel that individually any of the foregoing six concerns would merit sending the proposed draft statute back to the Subcommittee for further study. Taken together, however, these concerns make it clear that the proposed draft statute is not ready for adoption by the MTC, much less any state.

In addition to the comments presented previously, the undersigned trades note that during the public hearing, Mr. Michael Fatale mentioned a State Tax Notes article from November 22, 2010 that he believed supported the view that LLCs are widely used as tax planning vehicles by the insurance industry. Attached is a copy of the article, titled "Captive Structures And Other Tax Planning." We have reviewed the attached article carefully and do not believe it supports the notion that LLCs are widely used by the insurance industry as tax planning vehicles. Rather, we believe that the article supports our position for at least three reasons. First, the article mentions the use of LLCs as tax planning vehicles as something the author has seen in the context of captive insurance companies. This supports the undersigned trades' view that the Subcommittee should further investigate whether the perceived abuses sought to be remedied by the statute are largely limited to captive insurance companies.

Second, the article focuses on situations in which the captive insurance company and subsidiary LLC are not primarily engaged in the business of insurance (sometimes referred to as "stuffed" captives), such that the arrangement could be challenged by states because the captive might not qualify as an insurance company for federal income tax purposes. The undersigned trades suggested in July of 2008 that this situation may be reflective of the perceived abuses sought to be addressed by the proposed draft statute, and members of the Subcommittee at that time expressed some interest in understanding what arrangements might be perceived as "abusive" from the perspective of a state insurance regulator. As we have previously noted, to the best of our knowledge no further work was conducted in this area.

Third and contrary to the implication in the statement made by Mr. Fatale at the public hearing, at no point does the author suggest that in his experience the traditional insurance industry uses LLCs as tax-planning vehicles. The author's comments regarding potential abuses are clearly in the context of captive insurance arrangements. For the foregoing reasons, we do not believe the November 22 State Tax Notes article provides any support for the adoption of the proposed model at this time.

Finally, in the interest of creating a complete record, we note that the attached article titled "Potential Effects of the MTC Draft Model Passthrough Entity Statute" appeared in the April 28, 2011 issue of State Tax Notes. As you will see, the article is generally supportive of the points raised by the insurance industry in this process.

Accordingly, as stated in our written submission on May 16th, the undersigned trades urge the MTC to return this project to the Subcommittee for further evaluation and consideration, with specific instructions to consult with a representative cross-section of state insurance regulators on the points raised in these comments. We appreciate the opportunity to present these follow up comments and would be pleased to discuss them with you in further detail if that would be helpful to you.

Respectfully submitted,  
AMERICAN COUNCIL OF LIFE INSURERS  
AMERICAN INSURANCE ASSOCIATION  
PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA